
(2011) 06 SHI CK 0158
In the High Court Of Himachal Pradesh
Case No : CWP No. 356 of 2011

Parvez Aktar

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0158

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—Present petition has been filed by the Petitioner for direction to the Respondents to give him employment on compassionate grounds. A notice of the petition was issued to the Respondents, who filed their reply.

2. I have heard the learned Counsel for the parties and have gone through the record of the case.

3. The facts of the case are that the father of the Petitioner, who was employed with the Himachal Road Transport Corporation, had applied on 25.9.2000 for premature retirement on medical grounds and had also requested that his son, i.e. the present Petitioner, may be given employment under "the Kith and Kin Policy for providing employment on compassionate grounds". The father of the Petitioner stood retired on 16.12.2000.

4. The Petitioner submitted representation to Respondent No. 2 for providing him employment on compassionate grounds under the aforesaid Policy. The recommendation was made by Respondent No. 1 to Respondent No. 2 to consider the case of the Petitioner for employment on compassionate grounds. Thereafter, the other representations were also made by the Petitioner to the Respondents. Respondent No. 2, vide letter dated 18.8.2003, (Annexure P-16) informed the Petitioner that his name has been approved for appointment against Class III post under the said Policy. However, it was mentioned that owing to grim financial position of the Corporation, employment on

compassionate ground under the Policy is not being offered to any candidate. Thereafter, vide letter dated 11.12.2008, (Annexure P-21), the Petitioner was informed that his case has been approved by the Screening Committee of the HRTC for the post of Clerk and that the employment case of the Petitioner, alongwith the other cases for appointment on compassionate grounds, had been sent to the State Government for permission and the said permission was still awaited. It was further informed that as soon as the permission of the State Government was received, further action in the matter would be taken.

5. Thereafter, the Petitioner sought information under the Right to Information Act in regard to the posts, which were still vacant in the Corporation. The information was given that there are 18 posts of Chowkidars in the HRTC and it was observed in the meeting of the Board of Directors that six posts of Chowkidars be filled in. Under additional item No. 7 of the minutes of the meeting of the Board of Directors, it was decided as under:

Providing of employment on compassionate grounds under Kith & Kin policy to the kinds of the deceased employees/who sought retirement on medical grounds.

Approved only for widows.

6. It is clear from the above discussion that there is no dispute in regard to the Policy of the HRTC to provide employment to the kith and kin of an employee, who sought retirement on medical grounds. The said Policy of the HRTC was never revised by amending the relevant rules that henceforth no employment shall be given to the kith and kin and it shall be given only to the widow of an employee. There is nothing that the amendment was made in the Rules by the Board of Directors and it was inserted that henceforth the employment cannot be provided to other kith and kin, except to the widow. To my kind, this was only resolved in the meeting without amending the relevant rules, which provide for employment to the kith and kin also.

7. Once the HRTC did not provide employment to the Petitioner, as admitted by them, the Petitioner filed a writ petition being CWP No. 1748 of 2009, titled Parvez Akhtar v. State of H.P. and another, and this Court, while disposing of the said petition, passed the following orders on 30.6.2010:

6. In any case, these instructions were issued subsequent to the issue of letter dated 18th August, 2003, Annexure P-16, by which the Petitioner was conveyed that his name had been approved for appointment in Class-III posts under the Kith and Kin policy, meaning thereby that the decision to appoint the Petitioner had been taken before the issue of the aforesaid two letters. The decision was not given effect to only because of financial crunch. It is not the case of Respondent No. 2 that it is unable to give employment to the Petitioner, even now, on account of any financial difficulty.

7. In view of the abovesaid position, writ petition is allowed and Respondent No. 2 is directed to implement its decision of appointing the Petitioner in Class-III

post as conveyed to him, vide communication dated 18th August, 2003, Annexure P-16. These directions be complied with within two months from today.

8. Against this order, the Respondents preferred an appeal, being LPA No. 145 of 2010, which was disposed of by a Division Bench of this Court on 18.10.2010 as follows:

The impugned judgment is set aside. There will be a direction to the Government to take a final decision in the matter of appointment on compassionate ground in accordance with law and justice within a period of three months from the date of production of a copy of the judgment. In case, the Petitioner requests for an opportunity of hearing, the same shall also be given to him. The contentions advanced by the writ Petitioner shall be adverted to by the Government while passing the order.

9. Thereafter, a representation was made by the Petitioner to the Respondent seeking employment in pursuance of the directions given by this Court in the LPA. However, the Principal Secretary (Transport) to the Government of H.P. passed an order, which, in my opinion, does not appear to be in accordance with the directions issued by this Court or the Policy of the Corporation. A perusal of the impugned order dated 4.12.2010 shows that it has not been disputed that the wards under the kith and kin policy are to be appointed but it was observed in the order passed by the Principal Secretary (Transport) as under:

The perusal of the seniority list of candidates waiting for appointment based on their fathers' medical grounds would show that Shri Parvez Akhtar cannot be appointed unless all his 20 seniors are first appointed.

It was further mentioned in the subsequent para of the said order as under:

State Government on 15th July, 2010 has issued instructions for providing of employment assistance on compassionate grounds and has decided that as per present policy of Government only those cases will be sent to Finance Department where applicant is a widow or cases of applicants whose both parents are not alive. Shri Parvez Akhtar obviously does not fall in the compassionate grounds as his parents are alive.

It was also mentioned in the said order that the Petitioner was shown the entire list, in which his seniority was at Sl. No. 21, and a letter of the Finance Department dated 15.7.2010 and accordingly, it was observed that the Petitioner has no case for appointment at least at present under the existing Kith and Kin Policy in Class III posts in HRTC.

10. It is, therefore, clear from the above discussion that the Policy for providing employment to kith and kin still exists, which has not been implemented by the Respondents in spite of orders passed by the Division Bench of this Court. There is nothing as to what was the necessity for the HRTC to make a reference to the State Government for approval once the HRTC is an independent Corporation, which is free to take such decisions.

11. A reference has been made by the learned Counsel for the Petitioner to the decision of the Supreme Court in Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another, Their Lordships were considering the question in regard to the income of Andhra Pradesh Road Transport Corporation established under the Act and as to whether it is not exempted from union taxation. It was observed in para 17 that the Corporation though statutory has a personality of its own and this personality is distinct from that of the State or other shareholders. It cannot be said that a shareholder owns the property of the Corporation or carries on the business with which Corporation is concerned.

12. Once the HRTC was an independent body, it was entitled to take a decision in regard to providing of employment unless and until the rules were modified and it was clarified that henceforth from this date onwards, no employment shall be given to any kith and kin on compassionate ground of a retired employee except the widow.

13. My attention has been drawn by the learned Counsel for Respondent No. 2 to the reply filed by the Respondents, wherein preliminary objection was taken to taken to the following effect:

It may be relevant to submit here that the Himachal Road Transport Corporation is a State Government Undertaking and all the instructions issued by the State Government are being implemented in the Corporation. The Board of Directors of HRTC in its meeting held on 2.02.2009 decided that employment on compassionate grounds may be provided only for widows. In the meantime the State Government has issued instructions on 15th July, 2010 regarding providing of employment assistance on compassionate grounds. Only the cases of employment will be considered of widows of those dependants whose both parents are not alive. As per this policy the case of Petitioner is not covered as his parents are alive. As per present policy only those cases would be sent to the Finance Department where applicant is a widow or cases of applicants whose both parents are not alive.

14. Thus, the Respondents have taken the plea that the instructions issued by the State Government are being followed and as per policy of the State Government, the case of the Petitioner is not covered, as his parents are alive and the Petitioner is not a widow, but a son of the retired employee. It is for the Board of Directors of the HRTC to consider this question as to whether they are blindly following the directions issued by the State Government or they are bound by the rules framed by them vide which the employment was being given to the kith and kin of the retired employees. do not think that there was any necessity for reference to the Finance Department of the State Government for clearance, but this plea has been taken by the Respondents and on that basis they have not complied with the order passed by the Division Bench of this Court.

15. From the above discussion, it is clear that the Petitioner got the relief from a

Division Bench of this Court, which issued the directions, but these directions have not been complied with by the Respondents on one plea or the other as is clear from the above discussion. Therefore, I am of the opinion that the Petitioner has a remedy to move the court for contempt of the orders passed by the Division Bench of this Court, as against the Respondents, once the facts have already been clarified in the observations made by me as above. At this stage, the learned Counsel for the Petitioner seeks permission to file contempt proceedings as against the Respondents and as such the present petition is being disposed of in view of this submission of the Petitioner, who is at liberty to file appropriate proceedings under the Contempt of Courts Act for action against the Respondents since the directions were issued by the Division Bench, which have not been allegedly complied with by the Respondents on one pretext or the other and that question can be considered by the Division Bench only.

16. The petition stands disposed of accordingly, so also the pending application(s), if any.